IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 14133 of 2004

Between:

1 Smt. M. Kannemma, W/o Late M.N. Subramanyam,
R/o D.No. 13-80-I, M.R. Palle, Tirupathi, Chittoor District.
2 M. Jaya Prakash, S/o Late M.N. Subramanyam ,
R/o D.No. 13-80-I, M.R. Palle, Tirupathi, Chittoor District.
3 M. Jyothi, W/o Shadevulu,
R/o D.No. 13-80-I, M.R. Palle, Tirupathi, Chittoor District.
4 M. Kala, D/o Late M.N. Subramanyam,
R/o D.No. 13-80-I, M.R. Palle, Tirupathi, Chittoor District.

..... PETITIONERS

AND

1 The Commissioner of Endowments Department, Hyderabad.
2 The Deputy Commissioner of Endowments, Kurnool, Kurnool District.
3 The Assistant Commissioner Endowments Department, Chittoor, Chittoor District.
4 The Regional Joint Commissioner, Endowments Multie Zone to Tirupathi, Chittoor District.
5 State of Andhra Pradesh, Rep. by its Secretary, Revenue Department, Secretariat, Hyderabad.
6 The District Collector, Chittoor , Chittoor District.
7 The Revenue Divisional Officer, Tirupathi, Chittoor District.
8 The Mandal Revenue Officer, Tirupathi (Urban), Tirupathi, Chittoor District.
9 The Superintendent of Police, Chittoor, Chittoor District.
10 The Assistant Superintendent of Police, Tirupathi, Chittoor District.
11 M.R. Pally Police Station, rep. by its S.H.O. Tirupati, Chittoor District.

12 Sri Pangaluri, Arya Vyasya Seethamagari Dharma Sathram,
Kothaveedhi, Tirupathi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the action of the respondents in interfering with the petitioners peaceful possession and enjoyment of the scheduled property in Sy.No. 302 of an extent of Ac. 3.50 cents in M.R.Palle, Revenue Village Accounts, Tirupathi, Chittoor District, is illegal, arbitrary, un-constitutional in Violation of Arts. 14, 21 and 300-A of the Constitution of India and principles of natural justice and without jurisdiction and consequently direct the respondents to not to interfere with the petitioners peaceful possession and enjoyment of the schedule property in Sy.No. 302 of an extent of Ac. 3.50 cents in M.R. Palle Revenue village Accounts, Tirupathi, Chittoor District,.

Counsel for the Petitioner : MR.P.JAGADISH CHANDRA PRASAD

Counsel for the Respondents 1 to 4 : GP FOR ENDOWMENTS

Counsel for 12th respondent : Mr.K.S.Gopalakrishnan

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.14133 OF 2004

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ORAL ORDER :-

The petitioners four in number seek a Writ of Mandamus declaring the alleged action of the respondents in interfering with their peaceful possession and enjoyment of the land to an extent of Ac.3.50 cents situated in Sy.No.302 of M.R.Palle revenue village accounts of Tirupati, Chittoor District.

The case of the petitioners is that they are in possession and enjoyment of the property in question for the past several years by paying cist to the 12th respondent – Arya Vysya Seethamgari Dharma Sathram, Tirupati, which is a private trust. It is further stated that when the 12th respondent made an attempt to take possession unlawfully, the husband of the 1st petitioner and father of the petitioners 2 to 4 by name M.N. Subramanyam filed A.T.C.No.1 of 1993 on the file of the Court of the Principal District Munsif-cum-Special Officer, Tirupati and the same was decreed. However, the 12th respondent Trust preferred an Appeal (A.T.A.No.1 of 1997), on the file of III-Additional District & Sessions Judge, Tirupati, which was allowed. Aggrieved by the same, late M.N.Subramanyam preferred C.R.P.No.1592 of 1999 and the same is pending in this Court. Though initially an order of interim injunction was granted by this Court, subsequently the order was modified as the order of "Status Quo" by virtue of which the purchasers are continuing in possession. The petitioners also state that since a part of the said land was encroached by 3rd parties, late M.N.Subramanyam alienated the same to them and the purchasers are continuing in possession of that part of the land. While so, the 12th respondent initiated certain proceedings behind their back seeking eviction from the land in question. They were not served with any notice in the said proceedings, but on 06-08-2004 the police officials served a copy of the order dated 24-07-2004 issued by the Assistant Commissioner of Endowments,

Chitoor whereunder the officials of Endowments Department were deputed to attend the eviction of encroachers on 07-08-2004 in the land in question and to assist the Assistant Commissioner of Endowments for the said purpose. The said proceedings were purported to be issued on the basis of the order of the Deputy Commissioner of Endowments Department, Kurnool dated 09-07-2003 in O.A.No.23 of 2003 directing to vacate the encroachers of Sy.Nos.293 and 302 to a total extent of Ac.42-52 cents in exercise of powers conferred under Section 85 of The A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1987 (for short, 'the Act'). The 12th

respondent herein was described as owner of the said land and it was also alleged that it was encroached by a group of persons.

It is alleged that by taking advantage of the said order, the 12th respondent Trust with the assistance of the police have been attempting to interfere with the possession of the petitioners and other occupants. Hence, this writ petition seeking the above relief.

I have heard the learned Counsel for the petitioner and the learned Government pleader appearing for the respondents 1 to 4 and the learned Counsel appearing for the 12th respondent.

The learned Counsel for the petitioners vehemently contended that the Deputy Commissioner of Endowments has no jurisdiction to proceed against the property in question since the 12th respondent is purely a private trust and therefore the provisions of the Endowments Act are not applicable. Thus, according to the learned Counsel for the petitioners, the order in O.A.No.23 of 2003 as well as the consequential proceedings dated 24-07-2004 are without jurisdiction and consequently the entire action of the respondents is liable to be declared as arbitrary and illegal. The learned Counsel also contends that since the order of Status Quo granted in C.R.P.No.1592 of 1999 is subsisting, the respondents are not justified in attempting to dispossess the petitioners.

The learned Counsel for the 12th respondent while placing reliance upon the judgment of this Court in Writ Appeal No.1 of 1996, dated 04-10-1996 contended that there is a declaration by the Division Bench of this Court that the 12th respondent is a public charitable institution and there was also a direction to the official respondents to protect the interest of the properties belonging to the 12th respondent. Therefore, he contends that the Deputy Commissioner of Endowments, Kurnool (2nd respondent) is justified in initiating the proceedings under sub-section (1) of Section 85 of the Act (Act 30 of 1987) and rightly passed an order of eviction

against the petitioners.

As can be seen from the material on record, there is a dispute as to the nature of the property in question. That apart, the matter involves several disputed questions of fact which cannot be gone into by this Court while exercising the writ jurisdiction under Article 226 of the Constitution of India. It is also relevant to note that against the order in O.A.No.23 of 2003 passed under Section 85 of the Act an alternative remedy is available under the statute by way of Revision under Section 92 and Section 93 of the Act. Without exhausting the alternative statutory remedy, the petitioners cannot maintain this writ petition. The learned Counsel for the petitioners states that till such revision petition is filed, the possession of the petitioners may be protected since there is a threat of immediate dispossession in pursuance of the proceedings dated 24-07-2004 issued by Assistant Commissioner of Endowments, Chittoor.

Having regard to the facts and circumstances of the case and keeping in view that there is already an order of Status Quo in C.R.P.No.1592 of 1999, while grating liberty to the petitioners to avail the alternative remedy of Revision as available under The A.P. Charitable & Hindu Religious Institutions & Endowments Act, the Writ Petition is disposed of with a direction that the order dated 09-07-2003 passed by the Deputy Commissioner of Endowments, Kurnool in O.A.No.23 of 2003 as well as the impugned proceedings of the Assistant Commissioner of Endowments, Chittoor dated 24-07-2004 shall not be given effect to so far as the petitioners herein are concerned for a period of three weeks from today.

10th August, 2004.

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To

1 The Commissioner of Endowments Department, Hyderabad.
2 The Deputy Commissioner of Endowments, Kurnool, Kurnool District.
3 The Assistant Commissioner Endowments Department, Chittoor, Chittoor District.
4 The Regional Joint Commissioner, Endowments Multie Zone to Tirupathi, Chittoor District.
5 The Secretary,State of Andhra Pradesh, Revenue Department, Secretariat, Hyderabad.
6 The District Collector, Chittoor , Chittoor District.
7 The Revenue Divisional Officer, Tirupathi, Chittoor District.
8 The Mandal Revenue Officer, Tirupathi (Urban), Tirupathi, Chittoor District.
9 The Superintendent of Police, Chittoor, Chittoor District.
10 The Assistant Superintendent of Police, Tirupathi, Chittoor District.
11 The S.H.O., M.R. Pally Police Station, Tirupati, Chittoor District.
12. Two CCs to G.P. for Endowments, High Court Buildings, Hyderabad.(OUT)

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THE HON'BLE MS. JUSTICE G.ROHINI

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